


BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2001-019-C - ORDER NO. 2001-494

MAY 22, 2001

IN RE: Petition for Arbitration of IDS Telcom, LLC	)	
with BellSouth Telecommunications, Inc.	)	ORDER GRANTING
Pursuant to Section 252(b) of the	)	RECONSIDERATION OF
Communications Act of 1934, as Amended.	)	ORDER NO. 2001-107



This matter came before the Public Service Commission of South Carolina (“Commission”) on the Petition for Reconsideration filed by IDS Telcom, LLC (“IDS” or “Company”). By its Petition, IDS requested that the Commission reconsider Order No. 2001-107 in which the Commission denied a motion by IDS which requested that the Commission adopt an arbitration plan that would allow the parties to conduct cross-examination of the witnesses individually during the arbitration proceeding.

On January 5, 2001, IDS filed its Petition for Arbitration in which IDS requested that the Commission resolve certain open issues related to the negotiations of an interconnection agreement between IDS and BellSouth Telecommunications, Inc. (“BellSouth”). IDS also filed a motion requesting that the Commission adopt an arbitration procedure that allowed the parties to conduct cross-examination of witnesses in addition to any questioning conducted by the Commission. Order No. 2001-107, issued on February 5, 2001, denied IDS’s motion and further set forth a schedule and procedure

for the arbitration identical to the arbitration plan used by the Commission in previous arbitration proceedings.<sup>1</sup>

In its Petition for Reconsideration, IDS asserted that the arbitration proceeding constituted a contested case under the South Carolina Administrative Procedures Act. See S.C. Code Ann. Section 1-23-310(3). Further, IDS asserted that the APA provides any party the right of cross-examination in a contested case. See S.C. Code Ann. Section 1-23-330(3). IDS also submitted that due process required an administrative agency to provide notice and an opportunity to be heard, including the right to confront and cross-examine witnesses.

In Order No. 2001-17, the Commission noted that its previously adopted procedure for arbitration cases, wherein witnesses were examined in a panel format by a designee of the Arbitrator (the Commission), provided the parties with a “fundamentally fair hearing.” The Commission further cited to federal case law that indicated that fundamental fairness required only notice, an opportunity to present relevant and material evidence and arguments to the arbitrators, and an absence of bias on the part of the arbitrators. Order No. 2001-17 (citing *Hotels Condado Beach, La Concha & Convention Center v. Union De Tronquistas Local 901*, 763 F.2d 34, 38-39 (1<sup>st</sup> Cr.1985) and *Bowles Financial Group, Inc. v. Stifel, Nicolaus & Co.*, 22 F.3d 10,10, 1013 (10<sup>th</sup> Cir.1994)). The

---

<sup>1</sup> Under the Commission’s previously adopted arbitration plan, parties were afforded the opportunity to make opening statements to the Commission, sitting as the Arbitrator. Testimony from the witnesses was presented in a panel format, with each witness giving a summary of his prefiled testimony and offering his prefiled testimony into the record and prefiled exhibits into evidence. The examination of witnesses was conducted by the Arbitrator (the Commission) or its designee, and the examination could be directed to a specific witness or to the entire panel of witnesses. Parties were afforded the opportunity to submit non-binding lists of questions to the arbitrator to use in the examination of the witnesses. At the end of the proceeding, parties were afforded the opportunity to make closing arguments. Following the hearing, the parties could submit brief and proposed orders.

Commission concluded that an arbitration proceeding brought pursuant to Section 252 of the Federal Telecommunications Act of 1996 (“1996 Act”) does not grant an absolute right to cross-examination. Further, the Commission concluded that the previously established arbitration procedure provided the parties with a fundamentally fair hearing by providing for ample notice of the issues<sup>2</sup> and adequate opportunity to present evidence and arguments to the Commission.<sup>3</sup>

Upon examination of IDS’s Petition for Reconsideration, the Commission agrees that the definition of a “contested case” contained in the APA appears to include an arbitration proceeding filed pursuant to the 1996 Act. The APA defines “contested case” as “a proceeding including but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.” S.C. Code Ann. Section 1-23-310(3) (Supp. 2000). As the definition of “contested case” under the South Carolina APA appears to include an arbitration proceeding before the Commission, the Commission reconsiders its Order No. 2001-107.

Upon reconsideration, the Commission modifies the procedure for the arbitration procedure as follows:

---

<sup>2</sup> The parties receive notice of the issues to be arbitrated by the petition requesting arbitration and any response filed by the responding party. The 1996 Act requires a petitioning party to set forth in its petition the unresolved issues, the position of each of the parties with respect to those issues, and any other issues discussed and resolved by the parties. See 47 U.S.C. Section 252(b)(2)(A). Further, the 1996 Act provides that the “State commission shall limit its consideration of any petition ... to the issues set forth in the petition and in the response, if any, filed under paragraph (3).” 47 U.S.C. Section 252(b)(4)(A).

<sup>3</sup> The Commission recognized that the parties have the opportunity to prefile testimony. As such the parties are provided an opportunity to present relevant evidence to the Commission on each issue. Further, the parties are given the opportunity to present arguments to the Commission at the close of the proceeding, as well as the opportunity to present arguments in the form of written briefs.

(1) parties will be allowed to cross-examine the witnesses on an issue-by-issue basis,

(2) examination by the arbitrator's designee is eliminated, and

(3) parties are not required to file lists of non-binding questions.

All other procedures previously established for the arbitration proceeding remain in place.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



---

Chairman

ATTEST:



---

Executive Director

(SEAL)